11-10-2016

State v. Pettit Appellant's Brief Dckt. 44198

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**Nos. 44198 & 44199**
Plaintiff-Appellant,	)	
	)	**Latah County Case Nos.**
v.	)	**CR-2015-1389 & CR-2015-1408**
	)	
IVAN DRAKE PETTIT,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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Nature of the Case

The state appeals from the district court's appellate decision affirming the magistrate court's order granting Ivan Pettit's motion to suppress evidence obtained during a DUI investigation.

Statement of the Facts and Course of the Proceedings

In May 2015, Pettit was traveling south on Highway 95/Highway 8 near Moscow, Idaho.[1] (R., p.131; Tr., p.15, Ls.2-11; Defendant's Exhibits A, B.) Pettit approached a controlled intersection. (R., p.132; Tr., p.15, Ls.2-11; p.18, Ls.13 – p.19, L.24; State's Exhibits 3-7.) A driver may approach this intersection near Moscow by one of three lanes. (R., p.132; Tr., p.18, Ls.15-23; State's Exhibit 3.) From the left lane, a driver may either continue straight onto Highway 8, or turn left onto a local road. (R., p.132; Tr., p.17, Ls.14-22; State's Exhibits 3-7; Defendant's Exhibits A, B.) From both the center and right lanes, a driver is only permitted to turn right and to continue on Highway 95. (R., p.132; State's Exhibits 3-7.) These lanes are controlled by traffic signs and a traffic signal that displays a green right-turn arrow when a driver is permitted to turn right. (R., p.132; Tr., p.16, L.22 – p.20, L.7; State's Exhibits 2-7.)

Idaho State Police Sergeant Clint Baldwin observed Pettit enter the intersection from the center lane and turn right without signaling. (Tr., p.15, Ls.4-11.) Sgt. Baldwin effectuated a traffic stop based upon Pettit's failure to signal.

[1] At some unspecified point prior to the intersection, Highway 95 South is also designated as Jackson Street. (Tr., p.15, Ls.2-11; p.20, Ls.14-22; R., p.132 n.1; Defendant's Exhibit A.)

(Tr., p.20, L.23 – p.21, L.8; p.23, L.16 – p.24, L.2.) Pettit had glassy eyes, slightly slurred speech, and admitted to drinking alcohol prior to driving. (R., p.17.) Pettit then failed field sobriety tests, was arrested, and provided breath samples measuring a BAC of .126 and .119. (Id.) Additionally, Pettit's driving privileges were suspended at the time of the arrest due to a previous DUI conviction. (Id.) The state charged Pettit with second-offense misdemeanor driving under the influence and driving without privileges. (R., p.26.)

Pettit filed a motion to suppress evidence obtained during the DUI investigation. (R., pp.34-45.) Pettit argued that Sgt. Baldwin lacked reasonable suspicion to stop his vehicle, and that I.C. § 49–808(1), the statute upon which the stop was based, was unconstitutionally vague as applied to him and the circumstances of this case. (Id.) Following a hearing, the magistrate court granted Pettit's motion to suppress. (R., p.69; Tr., p.64, L.8 – p.70, L.25.)

In its intermediate appellate capacity, the district court affirmed the suppression order. (R., pp.131-146.) The district court concluded that Sgt. Baldwin lacked reasonable suspicion for the stop because I.C. § 49–808(1) did not require Pettit to signal from the turn-only lane, from which Pettit continued to travel on Highway 95 after the turn. (R., pp.134-141.) The district court rejected the state's alternative argument that, even if Sgt. Baldwin misapplied I.C. § 49–808(1) and lacked reasonable suspicion for the stop, that this mistake of law was objectively reasonable and that suppression was thus not required. (R., pp.143-145.) Because the district court affirmed the suppression order on the ground that Sgt. Baldwin lacked reasonable suspicion for the stop, it did not reach the

issue of whether I.C. § 49–808(1) was unconstitutionally vague as applied to Pettit. (R., pp.142-143.) The state timely appealed. (R., pp.150-153.)

ISSUES

1. Did the district court err in concluding that Sgt. Baldwin lacked reasonable suspicion to stop Pettit's vehicle for failing to signal at the intersection?

2. Is suppression of evidence the appropriate remedy when the statute upon which the underlying seizure was based is subsequently declared unconstitutionally vague as applied to the suspect?

3. Even if Sgt. Baldwin lacked reasonable suspicion to stop Pettit's vehicle, was this mistake of law objectively reasonable, and is suppression therefore unnecessary?

ARGUMENT

I.
The District Court Erred In Concluding That Sgt. Baldwin Lacked Reasonable Suspicion To Stop Pettit's Vehicle For Failing To Signal At The Intersection

A. Introduction

In its intermediate appellate capacity, the district court affirmed the magistrate court's order suppressing evidence obtained from Sgt. Baldwin's DUI investigation of Pettit following a traffic stop. (R., pp.131-146.) The district court concluded that Sgt. Baldwin lacked reasonable suspicion for the stop because I.C. § 49–808(1) did not require Pettit to signal from a turn-only lane, where Pettit continued to travel on Highway 95 after the turn. (R., pp.134-141.) The district court erred because the plain language of the signal requirement of I.C. § 49–808(1) does not contain any exceptions that removed Pettit's duty to signal under the circumstances of this case.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id.

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the

trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006).

The meaning and effect of a statute is a question of law over which the appellate courts exercise free review. State v. Hart, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001).

C. Sgt. Baldwin Possessed Reasonable Suspicion That Pettit Violated I.C. § 49–808(1) By Failing To Signal

"A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009).

However, limited investigatory detentions, based on less than probable cause, are permissible when justified by an officer's reasonable, articulable suspicion that a person has committed, or is about to commit, a crime. Royer, 460 U.S.at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210. "An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws." Young, 144 Idaho at 648, 167 P.3d at 785 (citing United States v. Cortez, 449 U.S. 411 (1981)). Whether an officer possessed reasonable suspicion is

evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. Bishop, 146 Idaho at 811, 203 P.3d at 1210; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003).

It is axiomatic and long-established that a statute will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). "When a statute is unambiguous, it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction." State v. Wiedmeier, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992) (citations omitted). In Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 894-896, 265 P.3d 502, 507-509 (2011), the Idaho Supreme Court held that Idaho appellate courts do not have the authority to modify unambiguous statutes even if it concludes that construing the statute as written would produce "absurd results."

Idaho Code § 49–808(1) provides:

> No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

Thus, pursuant to this statute, a driver must signal to indicate a turn any time he "turn[s] a vehicle onto a highway." "There are no exceptions in I.C. § 49–808 to the signal requirement." State v. Dewbre, 133 Idaho 663, 666, 991 P.2d 388, 391 (Ct. App. 1999) (citing State v. Pressley, 131 Idaho 277, 279, 954 P.2d 1073, 1075 (Ct. App. 1988).)

In this case, the district court's conclusion that Pettit was not required to signal at the intersection was primarily based upon two factors: (1) Pettit effectuated his turn from a right-turn-only lane; and (2) Pettit remained on Highway 95 South through the intersection. (R., pp.134-143.) The district court's reliance on these factors was misplaced because the signal requirement of I.C. § 49–808(1) does not contain an exception for either circumstance.

First, pursuant to the plain language of I.C. § 49–808(1), Pettit's presence in a right-turn-only lane prior to his turn did not excuse his statutory duty to signal. The district court's contrary conclusion was based upon the fact that, in the court's judgment, requiring a driver to signal in this circumstance "would not aid in promoting safety on the roadways" because signaling from a right-turn only lane would not benefit other drivers. (R., pp.140-141.) However, the plain language of I.C. § 49–808(1) does not contain any exception for turn-only lanes, nor does it provide that the signal requirement does not apply when a driver (or subsequently, a court) deems that signaling does not promote public safety in a particular circumstance. Instead, the Idaho legislature expressly *removed* such a provision from the statute in 1977. See Dewbre, 133 Idaho at 666, 991 P.2d at 391 (rejecting Dewbre's argument that I.C. § 49–808 does not require a driver to signal when entering or exiting a passing area, and noting that, prior to the 1977 amendment, I.C. § 49–808 provided that an appropriate turn signal was only required "in the event any other traffic may be affected by such movement," but that this statute no longer contained this exception); see also 1953 Idaho Sess.

Law 507; 1977 Idaho Sess. Law 370. The district court thus erred by essentially writing such an exception into the turn signal requirement of I.C. § 49–808(1).

Numerous other jurisdictions have interpreted state statutes similar to I.C. § 49–808(1) as requiring drivers to signal from turn-only lanes. See e.g., Commonwealth v. Brown, 64 A.3d 1101, 1106 (Pa. Super. Ct. 2013) ("The statute requires use of a signal lamp or a hand signal when making a turn, and provides no exception for turns made from a lane designated for turns only.)" State v. Smith, 42 A.3d 845, 846-847 (N.H. 2012) (declining to find exception for turn made from left-turn-only lane where none existed in the statute); Wehring v. State, 276 S.W.3d 666, 670 (Tex. Crim. App. 2008) ("The plain language of the statute requires the driver to signal for a turn. It does not include exceptions for those situations in which there is only one direction to turn."); State v. Smith, 805 N.E.2d 171, 172-173 (Ohio Ct. App. 2004) (holding that police had probable cause to stop the appellant because use of a signal was required when turning from a left-turn-only lane).

Notably, at least two other jurisdictions which have interpreted statutory turn-signal requirements as containing an exception for turn-only lanes, have done so on grounds that would be inapplicable to a plain-language reading of I.C. § 49–808(1) in Idaho. In State v. Padilla, 850 P.2d 372, 372-373 (Or. Ct. App. 1993), the Oregon Court of Appeals relied upon a prior Oregon case in which the Court opted for a "pragmatic" construction of the term "turn" as used in the relevant statute, and "refused to construe 'turn' literally, because that would create 'absurd situations in which safety is not furthered.'" (quoting State v. Bea,

810 P.2d 1328 (Or. Ct. App. 1991).) While this is similar to the reasoning set forth by the district court in the present case, an Idaho court interpreting an unambiguous statute[2] is not permitted to consider whether application of the literal, plain language of the statute would produce "absurd results." See Verska, 151 Idaho at 894-896, 265 P.3d at 507-509. In S.A.S. v. State, 884 So.2d 1167, 1168-1169 (Fla. Dist. Ct. App. 1994), the Florida District Court of Appeal held that a driver is not required to signal from a turn-only lane because the relevant state statute expressly requires a signal only when "any other vehicle may be affected by the movement." As discussed above, I.C. § 49–808(1) contains no such provision.

The district court also erred by relying on the road naming conventions utilized at the relevant intersection in determining that Pettit did not "turn." The court reasoned that "Pettit did not 'turn [his] vehicle onto a highway' because he was already traveling on Highway 95." (R., p.139 (brackets in original).) However, the turn signal requirement of I.C. § 49–808(1) provides no exception for the occasion of when a road name remains the same through a turn.[3] Just as the plain language of I.C. § 49–808(1) does not require a driver to signal at a

[2] In this case, the district court engaged in statutory construction and analyzed the legislative intent of I.C. § 49–808(1) despite deeming the statute unambiguous both with respect to the statutory interpretation issue (R., p.138), and in concluding that Sgt. Baldwin's mistake of law was not objectively reasonable (R., p.144).

[3] Further, the name designation of the road *did* change after the intersection, at least in part. Highway 95 South is also designated as Highway 8 prior to the intersection, and is additionally designated as South Jackson Street at some unspecified earlier point. (Tr., p.15, Ls.2-11; p.20, Ls.14-22; R., p.132 n.1; Defendant's Exhibit A.) After the intersection, Highway 95 and Highway 8 split. (Defendant's Exhibits A, B.)

point where a straight road happens to change names, I.C. § 49–808(1) likewise does not excuse a driver's statutory duty to signal prior to a turn when the road name stays the same. See Kelly v. State, 413 S.W.3d 164, 170-171 (Tex. Crim. App. 2013) (holding that officer possessed reasonable suspicion that Kelly violated state statute requiring a driver to signal prior to a "turn" where Kelly "turned off the direct course of the road that he was on even though the name of the road did not change.")

Instead, Pettit "turn[ed]…onto" a highway pursuant to the plain language of I.C. § 49–808(1) because of numerous factors not adequately considered by the district court: (1) several posted traffic signs indicated that a driver in Pettit's lane was required to make a right turn (State's Exhibits 4-7); (2) a green traffic arrow specifically required that a driver in Pettit's lane is required to turn (State's Exhibits 5-7; see also I.C. 49-802(1)(b)); (3) the physical characteristics of the road, which led Pettit from the right lane to a right turn through the intersection (Defendant's Exhibits A, B; State's Exhibit 3); and (4) the relationship between Highway 95 South and the other roads at the intersection, where a driver must choose the appropriate lane and then either turn left, go straight, or, as Pettit did, turn right. (Defendant's Exhibits A, B; State's Exhibits 3-7.)

For these reasons, the factual finding made by the magistrate court, and affirmed by the district court, that Pettit's movement through the intersection did not constitute a "turn" onto a "highway" pursuant to I.C. § 49–808(1) was incorrect and unsupported by substantial evidence. Further, the district court erred by relying on this erroneous factual finding to conclude that the plain

language of the signal requirement of I.C. § 49–808(1) did not require Pettit to signal prior to traveling through the intersection. Likewise, the district court thus erred in concluding that Sgt. Baldwin lacked reasonable suspicion to stop Pettit's vehicle, and in affirming the magistrate court's suppression order.

II.
Suppression of Evidence Is Not The Appropriate Remedy When The Statute Upon Which The Underlying Seizure Was Based Is Subsequently Declared Unconstitutionally Vague As Applied To Him

A. Introduction

In his motion to suppress, Pettit argued that I.C. § 49–808(1) was unconstitutionally vague as applied to him, and therefore, it could not serve as the basis for Sgt. Baldwin's traffic stop. (R., pp.35-39.) While the district court did not reach this issue in affirming the magistrate court's suppression order (R., pp.142-143), the state anticipates that Pettit will raise this issue again in this appeal. This argument fails because, even assuming that I.C. § 49–808(1) was unconstitutionally vague as applied to Pettit, suppression of evidence from the underlying DUI investigation would not be the appropriate remedy for such a conclusion. Further, and in any event, the signal requirement of I.C. § 49–808(1) is not unconstitutionally vague as applied to Pettit and the circumstances of this case.

B. When A Statute Upon Which A Fourth Amendment Seizure Is Based Is Subsequently Deemed Unconstitutional, Suppression Is Not The Appropriate Remedy

The United States Supreme Court has held that a constitutionally valid seizure is not rendered invalid by a subsequent determination that the law on

which the seizure was based is unconstitutionally vague. See Michigan v. DeFillippo, 443 U.S. 31, 37-40 (1979);[4] see also United States v. Dexter, 165 F.3d 1120, 1125 (7th Cir. 1999) ("even if the statute was unconstitutional as applied, suppression would not be justified because Trooper Lewis reasonably relied on the statute when he determined that there was a violation.").

In DeFillippo, the defendant was arrested for violating a Detroit municipal ordinance providing that it was "unlawful for any person [suspected of criminal activity] to refuse to identify himself and produce evidence of his identity." Id. at 33. DeFillippo was charged with possession of a controlled substance recovered from a search incident to that arrest. Id. at 34. The trial court denied DeFillippo's motion to suppress. Id. at 34-35. The Michigan Court of Appeals reversed, holding that since DeFillippo had been arrested under an unconstitutionally vague city ordinance, both the arrest and the search were invalid. Id.

The United States Supreme Court reversed the Michigan Court of Appeals and found, "On this record there was abundant probable cause to satisfy the constitutional prerequisite for an arrest." Id. at 37. The Court noted that, at the time of DeFillippo's arrest, "there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance." Id. "Police are charged to enforce laws until and unless they are declared unconstitutional." Id. at 38. "Society would be ill-served

[4] As discussed below in Sec. III, the United States Supreme Court recently reaffirmed and relied upon DeFillippo in concluding that where an officer makes an objectively reasonable mistake of law in conducting a traffic stop, the Fourth Amendment does not require the suppression of evidence that was obtained as a result of the stop. Heien v. North Carolina, ___ U.S. ___, 135 S.Ct. 530, 535-540 (2014).

if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement." Id. The Court concluded, "[t]he subsequently determined invalidity of the Detroit ordinance on vagueness grounds does not undermine the validity of the arrest made for violation of that ordinance, and the evidence discovered in the search of respondent should not have been suppressed." Id. at 40.

The state recognizes that in Burton v. State of Idaho Dep't of Transp., 149 Idaho 746, 748-750, 240 P.3d 933, 935-937 (Ct. App. 2010), the Idaho Court of Appeals held that I.C. § 49–808(1) was unconstitutionally vague as applied to Burton and the circumstances of that case (specifically, whether a turn signal is required before one drives into a single lane that stems from the merger of two lanes). However, the state submits that such a holding conflicts with the holding in DeFillippo. Further, in Burton, the Court of Appeals did not expressly employ a Fourth Amendment analysis, or cite any authority standing for the proposition that the remedy for the statute's vagueness was suppression of the evidence. See id.

A determination that I.C. § 49-808(1) is unconstitutionally vague would warrant dismissal of a charge *for failing to signal a lane change* under that provision. But under DeFillippo, *for purposes of suppression*, it is immaterial whether I.C. § 49-808(1) is unconstitutionally vague as applied to Pettit. Therefore, even if I.C. § 49-808(1) was unconstitutionally vague in the circumstances of this case, such a finding would not undermine the validity of Sgt. Baldwin's detention of Pettit. Instead, Sgt. Baldwin had a constitutionally adequate basis to stop Pettit for violating I.C. § 49-808.

C. Idaho Code § 49–808(1) Is Not Unconstitutionally Vague As Applied To Pettit And The Circumstances Of This Case

"A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" F.C.C. v. Fox Television Stations, Inc., ___ U.S. ___, 132 S.Ct. 2307, 2317 (2012) (quoting United States v. Williams, 553 U.S. 285, 304 (2008)). Thus, "the void-for-vagueness doctrine addresses concerns about (1) fair notice and (2) arbitrary and discriminatory prosecutions." Skilling v. United States, 561 U.S. 358, 411, (2010).

Statutes, however, have a "strong presumption of validity" and the court must, if it can, "construe, not condemn" them. Id. at 403 (internal quotes and cites omitted). That "close cases can be envisioned" is insufficient to "render[] a statute vague" because the state must still prove its case beyond a reasonable doubt. United States v. Williams, 553 U.S. 285, 305-306 (2008). Even if a statute's "outermost boundaries" are "imprecise," such uncertainty has "little relevance" if the "appellant's conduct falls squarely within the 'hard core' of the statute's proscriptions." Broadrick v. Oklahoma, 413 U.S. 601, 608 (1973); see also Skilling, 561 U.S. at 411 (citing Broadrick). Furthermore, sufficient clarity "may be supplied by judicial gloss on an otherwise uncertain statute." United States v. Lanier, 520 U.S. 259, 266 (1997). "'One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.'" Alcohol Beverage Control v. Boyd, 148 Idaho 944, 949, 231 P.3d 1041, 1046 (2010)

(quoting Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 n. 7 (1982) (internal quote omitted)).

In this case, for similar reasons as discussed above in Sec. I regarding why Sgt. Baldwin had reasonable suspicion to stop Pettit, the signal requirement of I.C. § 49–808(1) was not unconstitutionally vague as applied to Petttit and the circumstances of this case. The plain language of the statute required Pettit to signal prior to his right turn at the Highway 95/Highway 8 intersection, and did not contain any exceptions to that requirement for turn-only lanes, or for when a road name remains the same through the course of a turn.

Burton, in which the Idaho Court of Appeals held that I.C. § 49–808(1) was unconstitutionally vague as applied to Burton and the circumstances of that case, is distinguishable. At issue in Burton was the provision of I.C. § 49–808(1) requiring a driver to signal prior to "mov[ing] a vehicle right or left upon a highway." Burton, 149 Idaho at 748-749, 240 P.3d at 935-936. The Court of Appeals held that the statute did not provide fair notice "that a signal is required before one drives into a single lane that stems from the merger of two lanes." Id. As the Court noted, there was no "signage or *other indicator* that one lane was ending and the other surviving." Id. at 749, 240 P.3d at 936 (emphasis added).

To the contrary, in the present case, there was ample signage and traffic signals informing Pettit that, to continue on Highway 95 South, he needed to be in the middle or right lane and then *turn* right. (Tr., p.16, L.22 – p.20, L.7; State's Exhibits 3-7.) Prior to making this turn, Pettit was required to signal. I.C. § 49–808(1); see also State v. Colvin, 157 Idaho 881, 884-885, 341 P.3d 598, 601-602

(Ct. App. 2014) (distinguishing Burton and holding that I.C. § 49–808(1) was not unconstitutionally vague as applied to Colvin because a posted sign clearly indicated which lane was terminating); State v. Spies, 157 Idaho 269, 273-274, 335 P.3d 609, 613-614 (Ct. App. 2014) (distinguishing Burton and holding that I.C. § 49–808(1) was not unconstitutionally vague as applied to Spies because the configuration of the road made it clear which lane was terminating).

Even assuming that suppression is the appropriate remedy when the statute upon which a seizure is based is subsequently deemed unconstitutional, Pettit is still not entitled to suppression because the signal requirement of I.C. § 49–808(1) is not unconstitutionally vague as applied to him and the circumstances of this case.

III.
Even If Sgt. Baldwin Lacked Reasonable Suspicion To Stop Pettit's Vehicle, This Mistake Of Law Was Objectively Reasonable, And Therefore, Suppression Is Unnecessary

A. Introduction

As an alternative argument presented to the magistrate court in response to Pettit's motion to suppress (R., pp.56), and to the district court in its intermediate appellate capacity (R., pp.98-99), the state argued that any mistake of law made by Sgt. Baldwin was objectively reasonable, and thus, suppression was not warranted under the Fourth Amendment. Both the magistrate court and the district court rejected this argument. (R., pp.143-145; Tr., p.64, L.18 – p.69, L.8.) The district court concluded that there was no objectively reasonable mistake of law because the relevant provision of I.C. § 49–808(1) was clear and

unambiguous. (R., pp.143-145.) The district court erred in rejecting the state's argument.

Even assuming that I.C. § 49–808(1) did not require Pettit to signal prior to turning through the intersection, and that Sgt. Baldwin thus lacked reasonable suspicion to effectuate a traffic stop, Sgt. Baldwin's mistake of law was objectively reasonable. Therefore, the district court erred in rejecting this argument as set forth by the state, because suppression was not warranted.[5]

B. If Sgt. Baldwin's Interpretation Of I.C. § 49–808(1) Was Erroneous, This Was A Reasonable Mistake Of Law Which Does Not Require Suppression

Whether an officer's mistake of law will necessarily invalidate a traffic stop is an issue that has never been squarely addressed by Idaho's appellate courts. See State v. Horton, 150 Idaho 300, 246 P.3d 673 (Ct. App. 2010) (declining to address whether mistake of law invalidated traffic stop because "mistake at issue was primarily one of fact"); State v. Buell, 145 Idaho 54, 175 P.3d 216 (Ct. App. 2008) (where officer's alleged mistake of law did not cause Buell's detention, authorities addressing the viability of detentions based on mistakes of law were "inapposite"); State v. McCarthy, 133 Idaho 119, 982 P.2d 954 (Ct. App. 1999) (finding it unnecessary to "resolve whether a police officer's mistake of law is unreasonable *per se*" because, even "allowing for reasonable mistakes of law by police," there was "nothing in the record from which it might be concluded that the officer's mistake was objectively reasonable").

[5] Below, the district court did not distinguish between the United States and Idaho Constitutions with respect to this issue. (See R., pp.143-145.) On appeal, the state asserts that suppression is not warranted under either the United States or Idaho Constitutions.

Recently, however, in Heien v. North Carolina, ___ U.S. ___, 135 S.Ct. 530, 534-540 (2014), the United States Supreme Court addressed the issue of whether an officer's mistake of law will necessarily invalidate a traffic stop under the Fourth Amendment. In that case, an officer stopped Heien because the vehicle in which he was travelling did not have two properly functioning brake lights. Heien, 135 S.Ct. at 534. The officer subsequently recovered cocaine during a consensual search of the vehicle. Id. The trial court denied Heien's motion to suppress the evidence obtained in the search. Id. at 535. However, the North Carolina Court of Appeals reversed, holding that the traffic stop was constitutionally invalid because N.C. Gen. St. § 20-129(g), the state statute upon which the stop was based, required only that vehicles have one properly functioning brake light. Id. The North Carolina Supreme Court reversed the Court of Appeals, holding that the officer "could have reasonably, even if mistakenly, read the vehicle code to require that both brake lights be in good working order," and that when an officer "acts reasonably under the circumstances, he is not violating the Fourth Amendment." Id. (quoting State v. Heien, 737 S.E.2d 351, 356 (N.C. 2012).

The United States Supreme Court granted certiorari and affirmed the decision of the North Carolina Supreme Court. Id. at 534-540. The Court reasoned:

> As the text [of the Fourth Amendment] indicates and we have repeatedly affirmed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. ___, ___, 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014) (some internal quotation marks omitted). To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the

> part of government officials, giving them "fair leeway for enforcing the law in the community's protection." *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

Id. at 536 (brackets added).

The Supreme Court then noted its previous recognition that searches and seizures based upon mistakes of *fact* can be reasonable. Id. For example, the Court noted, the warrantless search of a home is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. Id. (citing Illinois v. Rodriguez, 497 U.S. 177, 183–186 (1990).) The Court found no distinction between this principle and reasonable mistakes of law:

> But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

Id.

Further, the fact that a traffic stop need only be supported by reasonable suspicion and involves only a minimal intrusion on the privacy of the individual stopped differentiates this case from other cases in which the Idaho Supreme Court has declined to apply a "good faith" exception to the exclusionary rule under other circumstances. See State v. Koivu, 152 Idaho 511, 513-519, 272 P.3d 483, 485-491 (2012); State v. Guzman, 122 Idaho 981, 984-998, 842 P.2d

660, 663-677 (1992). While providing citizens greater protections from warrantless searches of their person, homes, cars and other property may well be justified in light of the inherently invasive nature of such searches, the same concerns are not present when an officer, having an objectively reasonable (albeit mistaken) belief that a motorist has committed a traffic violation, briefly detains the motorist for the purpose of simply confirming or dispelling that suspicion.

In fact, requiring "law enforcement officers to accurately forecast how a reviewing court will interpret the substantive law at issue" is actually "inconsistent with the rationale underlying the reasonable suspicion doctrine." See Heien, 737 S.E.2d at 357. Both the United States Supreme Court and Idaho's appellate courts have recognized that reasonable suspicion cannot be reduced to any precise legal formula, but must instead be based on commonsense judgments considering the totality of all of the circumstances known to the officer. E.g., Illinois v. Wardlow, 528 U.S. 119, 125 (2000); Ornelas v. United States, 517 U.S. 690, 695 (1996); State v. Kessler, 151 Idaho 653, 655, 262 P.3d 682, 684 (Ct. App. 2011).

Finally, the United States Supreme Court also recognized that a rejection of the state's argument regarding objectively reasonable mistakes of law would be "hard to reconcile" with its prior opinion in DeFillippo, 443 U.S. 31 (1979). Heien, 135 S.Ct. at 538. DeFillippo, as discussed above in Sec. II, was seized for violating a statute which was subsequently deemed unconstitutionally vague. Id. (citing DeFillippo, 443 U.S. at 33-35). At the time DeFillippo was arrested,

however, "there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance." Id. (citing DeFillippo, 443 U.S. at 37). Therefore, the Supreme Court held, the officer still had probable cause to arrest DeFillippo at the time of the arrest, and the search that recovered contraband from his person was still constitutional. Id. (citing DeFillippo, 443 U.S. at 37-38).

For all of the reasons set forth above, this Court should hold that, even if I.C. § 49–808(1) did not require Pettit to signal prior to traveling through the intersection, or even if the statute was unconstitutionally vague as applied to Pettit and the circumstances of this case, suppression of evidence is not warranted under the Fourth Amendment because Sgt. Baldwin's mistake of law was objectively reasonable.

Like the challenged statutes in Heien and DeFillippo, I.C. § 49–808(1) has never been interpreted by Idaho appellate courts to answer the relevant questions of the underlying case – in this instance, whether a driver is required to signal from a turn-only lane, or when the name of the road remains the same through a turn. Therefore, at the time of the arrest, Sgt. Baldwin acted reasonably in concluding that Pettit's action of turning from a lane controlled by a sign and traffic signal, both of which expressly indicated that a right *turn* was required, was a "turn…onto a highway" pursuant to I.C. § 49–808(1). Therefore, because any mistake of law was objectively reasonable, Pettit has failed to show that he is entitled to suppression.

Even assuming that I.C. § 49–808(1) did not require Pettit to signal prior to his right turn at the intersection, and that Sgt. Baldwin thus lacked reasonable suspicion to effectuate a traffic stop, Sgt. Baldwin's mistake of law was objectively reasonable. Therefore, the district court erred in rejecting this argument as set forth by the state below, because suppression was not warranted.

CONCLUSION

The state respectfully requests this Court to vacate the district court's appellate decision and the magistrate court's order granting Pettit's motion to suppress, and to remand for further proceedings.

DATED this 10th day of November, 2016.

__/s/ Mark W. Olson_____
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have on this 10th day of November, 2016, caused two true and correct copies of the foregoing BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

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__/s/ Mark W. Olson_____
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MWO/dd